Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems	)	ET Docket No. 00-258
	)	
The Establishment of Policies and Services Rules for the Mobile-Satellite Service in the 2 GHz Band	)	IB Docket No. 99-81
	)	
Amendment of the U.S. Table of Frequency Allocations to Designate the 2500-2520/2670-2690 MHz Frequency Bands for the Mobile-Satellite Service	)	RM-9911
	)	
Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service	)	RM-9498
	)	
Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service	)	RM-10024

PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's rules,[1] the Cellular Telecommunications & Internet Association ("CTIA")[2] seeks reconsideration of the Commission's decision in the

---

[1] 47 C.F.R. § 1.429 (2003).

[2] CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

Third Report and Order[3] to retain 40 MHz of spectrum for 2 GHz mobile satellite services ("MSS"). As discussed below, the Commission should reallocate all unassigned spectrum, or spectrum from companies that miss their 2 GHz milestones, to services other than MSS. It does not make sense for such valuable spectrum to lie fallow or be underutilized, when other terrestrial services have a significant need for additional spectrum. It also does not make sense for the Commission to assign additional spectrum to the remaining MSS licensees, none of whom have demonstrated that they have a need for the spectrum to support a viable business plan. Instead, the Commission should stand by its decision that the current licensees receive no more than the seven megahertz of bandwidth that they were originally assigned, and all other remaining spectrum should be reallocated.

DISCUSSION

In light of the pervasive evidence regarding the questionable viability of the mobile satellite service industry,[4] the Commission should have taken the opportunity in the *Third Report and Order* to reallocate from MSS to other services all unassigned spectrum and all spectrum

---

[3] *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band, Amendment of the U.S. Table of Frequency Allocations to Designate the 2500-2520/2670-2690 MHz Frequency Bands for the Mobile-Satellite Service, Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service*, ET Docket No. 00-258, IB Docket No. 99-81, RM-9911, RM-9498, RM-10024, *Third Report and Order and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003) ("*Third Report & Order*").

[4] The strongest indication of the questionable viability of the MSS industry is the recent action by the Commission to declare null and void the licenses of four of the original eight MSS licensees for failure to satisfy their first milestone. S*ee also,* New ICO Communications Ltd. *ex parte* letter dated March 8, 2001 (stating coverage limitations are a "crippling impediment" to MSS systems that place in "dire jeopardy" the ability of MSS to deliver service.); *Petition for Rulemaking of the Cellular Telecommunications & Internet Association*, p. 3, n. 8-12, May 18, 2001 (citing multiple reports on the financial problems of Iridium, Globalstar, and New ICO)

from companies that have missed milestones. The Commission also should have provided the MSS industry with the certainty that their operating plans must be based on use of 7 MHz of spectrum that it previously determined to be sufficient to sustain a viable MSS offering,[5] and that all spectrum from missed milestones will be reallocated. The reallocation of 30 MHz of spectrum was a positive initial action, but the rationale for reclaiming and reallocating that 30 MHz of spectrum holds for all 2 GHz MSS spectrum that is unassigned or that is relinquished due to missed milestones, now or at any point in the future.

The Commission instead has chosen to continue its subsidization of the failing MSS industry by redistributing a portion of the frequencies of 2 GHz MSS licensees that missed their first milestones to the MSS licensees remaining in the band.[6] The Commission also has indicated that spectrum recaptured as a result of future missed milestones may be assigned to existing licensees in a similar fashion.[7] The Commission articulated no public interest rationale for retaining 40 megahertz of spectrum for MSS.[8] This decision is not supported in logic, or in the record. Not one MSS licensee has established a demonstrated need,[9] or a public interest

---

5 *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, *Report and Order*, 15 FCC Rcd. 161267, 16139 ¶ 17 (2000).

6 *Third Report & Order* ¶ 32.

7 *Id.*

8 The lack of justification to grant additional spectrum to remaining MSS licensees is particularly glaring given the Commission's concurrent recognition that CMRS carriers have been far more successful than MSS providers in fully and efficiently utilizing their spectrum and in deploying services to consumers. As the Commission acknowledges, "terrestrial wireless services have seen substantially higher subscribership growth than MSS, even though both services share nearly the same amount of spectrum," and CMRS has a penetration rate of roughly 61 percent of all United States households, which dwarfs that of MSS. *Third Report & Order* ¶ 30.

9 *See Voicestream Reply Comments* at 9. (Satellite providers serve only 4,386 customers per megahertz of allocated spectrum versus 648,000 customers served by terrestrial wireless providers for each megahertz of their spectrum.)

benefit, for additional spectrum. There simply is no justification for dedicating such a large amount of valuable spectrum to remaining MSS licensees, particularly as the number of licensees fall due to missed milestones.

The grant of ancillary terrestrial component ("ATC") authority does not change this conclusion. Contrary to the assertions of one MSS licensee,[10] ATC will not transform the failing MSS business model into a successful one. As the Commission's decision requiring ATC to be truly ancillary to satellite services makes clear, ATC cannot be implemented in the absence of a viable MSS system, and ATC cannot be relied on as the economic driver of a successful MSS business.[11] Given the serious financial problems of the MSS industry, detailed by the providers themselves and demonstrated by the failure of several MSS providers to meet initial construction milestones, it makes no sense to lock up additional spectrum for an unproven service. Assigning spectrum beyond the seven megahertz the Commission previously assigned will only make it more difficult for the Commission to recover that spectrum at some point in the future.

If anything, MSS operators need *less* spectrum than initially allocated to them since consumer demand for MSS offerings has been demonstrated to be substantially less than initially anticipated.[12] Moreover, according to ATC proponents, one of the primary benefits of ATC is that it would not require an additional allocation of spectrum. New ICO, for instance, stated in

---

[10] *See, e.g., New ICO Global Communications (Holdings) LTD.*, Docket No. 99-81, *Ex Parte*, at 2 (filed Mar. 8, 2001) ("New ICO Proposal") ("[P]erhaps the most important benefit of the ATC concept is that it will allow the 2 GHz MSS service itself . . . to become a viable enterprise.").

[11] *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz bands; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, IB Docket Nos. 01-185, 02-364, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd. 1962 (2003) (adopting service rules that "condition MSS ATC on the provision of substantial satellite service") ("*MSS ATC Order*").

its initial proposal that "the ATC approach . . . will make digital mobile service widely available without occupying a single kilohertz of spectrum that the Commission has not already allocated for MSS."[13] Similarly, Motient contended that "[t]he proposed system will . . . substantially improve coverage, capacity, and reliability, without using any additional spectrum."[14] Since neither New ICO nor Motient predicated their spectrum estimates on the redistribution of other licensees' abandoned frequencies to their own operations, there is no basis for a Commission policy that does so.[15] Accordingly, the Commission should revisit its decision in the *Third Report and Order* to retain 40 MHz of spectrum for MSS.

The Commission is at a crossroads. It can continue the spectrum reform effort it began with the creation of the Spectrum Policy Task Force, and focus on a "more integrated, market oriented approach" to spectrum policy, or it can uphold an unsound spectrum decision based on a "Command and Control" model. The market has spoken, and continues to speak, with regard to MSS. In a time when spectrum is scarce, assigning additional spectrum to a questionable service is not in the public interest. The recovered MSS spectrum can and should be put to better use.

(cont.)

[12] *See Voicestream (T-Mobile) Reply Comments*, IB Docket No. 95-18, ET Docket No. 00-2589, at 9 (filed Nov. 8, 2001) ("Voicestream Reply Comments") (describing lack of MSS subscribership as compared to CMRS).

[13] *New ICO Proposal* at 6.

[14] *Motient Services Inc. and Mobile Satellite Ventures, Subsidiary LLC, Application for Assignment of for Authority to Launch and Operate a Next Generation Mobile Satellite System*, SAT-ASG-20010116-00010, *et al.*, at i (filed Jan. 16, 2001).

[15] While some MSS operators argue that additional MSS spectrum is necessary to permit future expansion, given the tenuous state of MSS industry, it would make more sense to focus on the launch stage now and consider sources of spectrum for potential growth in the unlikely event that appears necessary at some point in the future.

CONCLUSION

For the foregoing reasons, the Commission should reconsider its MSS reallocation decision and, instead, retain no more than seven megahertz of spectrum in the 2 GHz band for each surviving MSS licensee. All other spectrum in the 2 GHz band should be reallocated to more productive uses.

Respectfully submitted,

/s/ Michael F. Altschul

CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

1250 Connecticut Ave., N.W., Suite 800
Washington, D.C. 20036
(202) 785-0081

Michael F. Altschul
Senior Vice President and General Counsel

Diane J. Cornell
Vice President for Regulatory Policy

Christopher Guttman-McCabe
Director for Regulatory Policy

Its Attorneys

CERTIFICATE OF SERVICE

I, Christine Blomquist, hereby certify that on this 14th day of April 2003, the foregoing Petition for Reconsideration of the Cellular Telecommunications & Internet Association was filed electronically on the FCC's Electronic Comment Filing System and copies were served via electronic mail to the following:

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
c/o Vistronix, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Bryan Tramont
Senior Legal Advisor
Office of Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
btramont@fcc.gov

Jennifer Manner, Senior Counsel
Office of Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
jmanner@fcc.gov

Paul Margie
Spectrum and International Legal Advisor
Office of Commissioner Michael Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
pmargie@fcc.gov

Samuel Feder
Legal Advisor on Spectrum
and International Issues
Office of Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
sfeder@fcc.gov

Barry Ohlson
Legal Advisor for Spectrum and International
Office of Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
bohlson@fcc.gov

John Muleta
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
jbmuleta@fcc.gov

Catherine Seidel
Deputy Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
cseidel@fcc.gov

David Furth
Associate Bureau Chief/Counsel
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
dfurth@fcc.gov

Jennifer Tomchin
Legal Advisor, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
jbransco@fcc.gov

Blaise Scinto
Acting Chief, Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
bscinto@fcc.gov

John Spencer
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
jspencer@fcc.gov

Charlie Rush
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
crush@fcc.gov

Don Abelson
Chief, International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
dabelson@fcc.gov

Rick Engelman
Chief Engineer, International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
rengelma@fcc.gov

Ed Thomas
Chief, Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
ethomas@fcc.gov

Julius Knapp
Deputy Chief, Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
jknapp@fcc.gov

Geraldine Matise
Deputy Chief, Policy and Rules Division
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
gmatise@fcc.gov

Jamison Prime
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
jprime@fcc.gov

Kathleen O'Brien Ham
Deputy Chief, Office of Strategic Planning and
Policy Analysis
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
kham@fcc.gov

Qualex International
Portals II
445 12th Street, S.W. Room CY-B402
Washington, D.C. 20554
qualexint@aol.com

/s/ Christine Blomquist